IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

REGULAR SECOND APPEAL NO.822 of 1993

DATE OF DECISION: 20th September, 2006

Dharam Dass Chela Mansa Dass Udasi Sadhu

.....Appellant

versus

Didar Dass alias Didar Puri

.....Respondent

CORAM:- HON'BLE MRS. JUSTICE NIRMAL YADAV

Present: Mr.D.S. Nehra, Senior Advocate with
Mr.Munish Bhardwaj, Advocate for the appellant

Mr.R.K. Battas, Advocate with
Mr.Munish Jolly, Advocate for the respondent

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JUDGMENT:

The appellant/defendant-Dharam Dass has challenged the judgment and decree dated 19.3.1987 passed by Sub Judge Ist Class, Rajpura and judgment and decree dated 16.1.1993 passed by Additional District Judge, Patiala, vide which the respondent's suit for declaration, to the effect that he is Mohatmim in possession of the Dera Khir Ka Khera and agricultural land measuring 126 bighas - 16 biswas situated within the revenue estate of Harpalan, Tehsil Rajpura and is also entitled to recover a sum of Rs.8400/- lying deposited in the Court of Sub Divisional Magistrate, Rajpura in proceedings under Section 145 Cr.P.C.; also for correction of the entries in the revenue record and

restraining the defendant from interfering in his peaceful possession of the property belonging to the Dera, has been decreed.

The facts, in brief, are that Mahant Mansa Dass @ Mansa Ram Chela Kishan Dass, an Udasi Sadhu and Mohatmim of Dera (Khir Ka Khera), adopted the respondent-plaintiff as Chela according to customs of Udasi Bheikh and a writing to this effect was also executed on 7.1.1954. Plaintiff being the eldest Chela of Mahant Mansa Dass, was appointed as successor to Mahant Mansa Dass. According to the custom of Udasi Bheikh, the eldest Chela was to succeed his Guru as Mohatmim. Mahant Mansa Dass himself admitted this fact in Civil Suit No.129/90-T of 28.1.1969 decided on 31.10.1970 relating to a dispute over succession to the Dera. Even in a previous suit relating to succession of Dera, decided by the Nazam, District Patiala on 31.1.2004-BK it was held that the eldest Chela was to succeed. Accordingly, Mahant Mansa Dass had succeeded the previous Mahant Kishan Dass and claim of another Chela Puran Dass was rejected. Likewise, respondent-Didar Dass being appointed as Chela by Mahant Mansa Dass succeeded him as Mohatmim of the Dera. He was also in actual physical possession of the land in dispute. It was pleaded that appellant-Dharam Dass cannot succeed as Mohatmim of Dera, as well as, has no concern with the land belonging to Mahant Mansa Dass as he is not even a Sadhu of Udasi Bheikh. He is a married person and addicted to several vices. The Sadhus of Udasi Bheikh remain unmarried and observe celibacy. The appellant-defendant on the basis of

some forged and fabricated documents in collusion with revenue officials got the mutation of the land of the dera sanctioned in his favour from the Assistant Collector. Mahant Mansa Dass during his life time never adopted Dharam Dass as his Chela nor executed any Will in his favour.

Defendant-Dharam Dass controverted the pleadings and averred that plaintiff-Didar Dass was not in actual physical possession of the land of the Dera. The land had been attached by the Sub Divisional Magistrate, Rajpura in proceedings under Section 145 Cr.P.C. and a Receiver was appointed to manage the same. The proceedings under Section 145 Cr.P.C. were decided by the Sub Divisional Magistrate in favour of the defendant directing the Receiver to deliver possession to Ishwar Singh and Bant Singh, the tenants under the defendant. The defendant further averred that he succeeded to Mahant Mansa Dass after his death, as Mohatmim of the Dera on the basis of registered Will and election held by Udasi Bheikh. The plaintiff was never appointed as Mahant on the basis of writing dated 7.1.1954. The said writing is a false and fictitious document. It was further pleaded that Mahant Mansa Dass expelled (plaintiff) Didar Dass from the Dera during his life time as he had disobeyed him. It was further submitted that Mahant Mansa Dass had filed a suit against plaintiff Didar Dass, which was decided on 31.10.1970 and Mahant Mansa Dass had expelled him from the Dera. It was categorically pleaded that plaintiff was never appointed as Mohatmim of the Dera nor he was in actual physical possession of the suit land,

whereas, it was the defendant who was appointed as Mohatmim of the Dera by the Bheikh of the Udasi Sadhus. It was further pleaded that defendant-Dharam Dass had served Mahant Mansa Dass as his Chela and performed his last rites. He also acted as his attorney during his life time.

On the basis of pleadings of the parties, the following issues were framed.

"1. Whether the plaintiff is Chela of Mansha Dass-deceased Mohtmim of Dera Kheer-Ka-Khera, Harpalan? OPP

2. Whether plaintiff has succeeded Mansha Dass as Mohtmim of Dera Kheer-Ka-Khera? OPP

3. Whether the plaintiff is in actual physical possession of the land in dispute and Dera Kheer-Ka-Khera? OPP

4. Whether the plaintiff is entitled to recover Rs.8400/- lying deposited in the Court of S.D.M., Rajpura, in proceedings under Section 145 Cr.P.C.? OPP

5. Whether the plaintiff is entitled to injunction prayed for? OPP

6. Whether mutation of suit property in favour of the defendant is illegal and wrong? OPP

7. Whether the plaintiff has no locus standi to file the present suit? OPD

8. Whether the suit in the present form is not legally maintainable? OPD

9. Whether the defendant is the Mohtmim Mahant of Dera Kheer-Ka-Khera on the basis

of will, dated 23.7.1979 executed by Mansha Dass, Mahant Dera Kheer-Ka-Khera? OPD

10. Whether the defendant is the testamentary heir of Mohtmim of Dera Kheer-Ka-Khera on the basis of will dated 23.7.1979, executed by Mansha Dass Mahant, Dera Kheer-Ka-Khera? OPD

11. Whether the defendant was adopted as 'Chela' BY Mansha Dass Mohtmim Dera Kheer-Ka-Khera? OPD

12. Whether the plaintiff has filed a false, frivolous and vexatious suit, to his knowledge, and the defendant is entitled to compensatory costs, under Section 35-A CPC? OPD

13. Whether S.D.M., Rajpura, had declared defendant as Mohtmim entitled to possession of the suit land, vide his order, dated 31.3.1983, in proceedings under Section 145 Cr.P.C., if so, its effect? OPD

14. Relief."

Under issues No.9, 10 and 11, the appellant-defendant was to prove if he was testamentary heir of Mahant Mansa Dass and of the Dera 'Khir Ka Khera' on the basis of Will dated 23.7.1979 executed by Mahant Mansa Dass and whether he was adopted as Chela by Mahant Mansa Dass. The trial Court after taking into consideration the facts and evidence on record decided the aforesaid issues No.9,10 and 11 in favour of the plaintiff and against the defendant holding that defendant was not appointed as Mohatmim of the Dera. There was no evidence

to show that defendant was ever adopted as Chela by Mahant Mansa Dass when he was alive. At the time of execution of Will in favour of defendant Mahant Mansa Dass was not in sound disposing mind and its execution and registration is shrouded by suspicious circumstances and, therefore, the same cannot be relied upon. As such, the defendant is not the testamentary heir and Mohatmim of the Dera. It was further held that defendant was not appointed as Mohatmim of the Dera by the Bheikh of Udasi Sadhus, as alleged. Issues No.1,2 and 3 were decided in favour of the plaintiff holding that he was the Chela of Mahant Mansa Dass and after his death he succeeded him. The defendant challenged the judgment & decree of the trial Court in the Court of Additional District Judge, Patiala. The Ist Appellate Court affirmed the findings of the trial Court on all the issues and dismissed the appeal filed by the appellant-defendant.

There are two basic issues to be considered in the present appeal, - (i) Whether the defendant is testamentary heir of Mahant Mansa Dass and is thereby entitled to succeed Mahant Mansa Dass on the basis of the alleged Will dated 23.4.1979? and (ii) Whether the plaintiff was appointed as Chela by Mahant Mansa Dass and he succeeded him as Mohatmim of Dera Khir Ka Khera?

I have heard learned counsel for the parties and perused the material on record.

Learned counsel for the appellant-defendant argued that appellant had served Mahant Mansa Dass during his life time, whereas, Didar Dass (plaintiff) was not only renounced by Mahant Mansa Dass as his Chela, but was

also expelled by him during his life time. He pointed out that Mahant Mansa Dass had filed a suit for declaration to the effect that Didar Dass was not his Chela and as such he had no right to succeed as Mohatmim and inherit the properties of the Dera after his death. The said suit was decided on the basis of a compromise, Exhibit P-2. Learned counsel referred to the Will, Exhibit D-1 and General Power of Attorney (Exhibit D-2) executed by Mahant Mansa Dass in favour of appellant-Dharam Dass. He further argued that appellant-Dharam Dass had performed the last rites of Mahant Mansa Dass. After the death of Mahant Mansa Dass, Bheikh of Udasi Sadhus collected in the Dera and appellant-Dharam Dass was formally installed as Mahant of the Dera. He also referred to the photographs, Exhibits DW6/1 to DW6/14. Thereafter, mutation with regard to the land belonging to Dera was sanctioned in his favour by the Assistant Collector. Learned counsel further argued that as per the Will, Exhibit D1, Mahant Mansa Dass had appointed the appellant as his Chela and on the same day he had executed General Power of Attorney (Exhibit D2) in his favour. Mahant Mansa Dass stated in his Will that both the Chelas i.e. Didar Dass and Satnam Bairagi were incompetent and had not served Mahant Mansa Dass during his life time and caused loss to the property of the Dera, therefore, they had been expelled from the Dera. Since Dharam Dass was looking after and serving the Mahant and other Sadhus with devotion, therefore, he was appointed as a Chela. As such, the defendant inherited all the rights and properties of Mahant Mansa Dass after his death.

On the other hand, learned counsel for respondent-Didar Dass argued that execution of the Will as well as General Power of Attorney is shrouded with suspicious circumstances. He pointed out that Mahant Mansa Dass resided in the Dera at Harpalan, whereas, all the witnesses to the Will were from Ambala City. The Will was also scribed at Ambala City. It is anybody's guess why Mahant Mansa Dass was taken to Ambala from the Dera in village Harpalan. From the evidence on record, it appears that the testator-Mahant Mansa Dass was not aware about the execution of the Will when he was taken to Ambala. Had he been aware of this fact, he would have taken some respectable person from Harpalan along with him for being a witness to the Will. Hari Dass admitted in the cross-examination that defendant had asked him to witness the execution of the Will and not the testator Mahant Mansa Dass. Moreover, Hari Dass is the father-in-law of Dharam Dass, defendant and, therefore, he would certainly be an interested person to get his own son-in-law appointed as Mohatmim of the Dera and acquire the property of the Dera in his favour. It is not disputed that testator Mahant Mansa Dass was suffering from diabetics and diarrhea prior to his death. He was also having septic in his testicles. These facts were also admitted by Hari Dass. He also admitted that preceding the date of execution of the Will, Dharam Dass had made all preparations for the execution of the Will. He had brought all the witnesses in the morning and had taken Mahant Mansa Dass from village Harpalan to Tehsil office for the execution of the Will. From the above facts, it

is clear that Dharam Dass, propounder of the Will, had taken a prominent part in execution of the Will. Since he himself is beneficiary of Will, it certainly creates suspicion attending the execution of the Will. It is further argued that it is apparent from the writing executed on 7.1.1954 (Exhibit P1) that plaintiff-Didar Dass was adopted as Chela. Mahant Mansa Dass had collected all the respectable persons from the village Harpalan at his Dera in village Harpalan and adopted the plaintiff as his Chela.

From the evidence and facts on record it is evident that a day prior to execution of Will, Mahant Mansa Dass was taken from his Dera in Village Harpalan to Ambala, but no respectable person i.e. Panch, Sarpanch or Lambardar of the village was associated when the Will was scribed. It has come in the testimony of most of the witnesses that appellant had made all the preparations and also procured the witnesses of his choice from Ambala including his father-in-law Mahant Hari Dass. Both the courts below have recorded a concurrent finding that the Will was executed and registered at the instructions of the appellant and not out of the free will of the testator. It has also come in the evidence that 2/3 months prior to his death, Mahant Mansa Dass was unwell and was not in sound disposing mind. As discussed above, he was suffering from various ailments. He died 2½ months after the execution and registration of the Will in question. In such circumstances, the finding of both the courts below that appellant has not only failed to satisfy the judicial conscience of the Court, but has

also not been able to dispel or explain the suspicious circumstances surrounding the execution of the Will, appears to be quite reasonable and based on evidence on record.

It is not denied by any of the parties that Mahant of an Udasi Shrine is appointed by Bheikh, according to custom/usage of a particular Dera. In the present case, respondent/plaintiff Didar Dass was adopted as Chela by Mahant Mansa Dass by means of writing dated 7.1.1954 (Exhibit P-1). The said writing has been duly proved by PW4 Ram Kishan, Deed Writer, who had scribed the same on the asking of Mahant Mansa Dass. He had also made the entry to this effect in his register at serial No.53. A bare reading of the writing (Exhibit P-1) clearly shows that Mahant Mansa Dass had not appointed any Chela prior to 7.1.1954. As per the custom of the Bheikh, it was necessary for a Mohatmim to appoint his chela and, therefore, he appointed Didar Puri, who was 14 years of age at that time, as Chela. Didar Puri had been performing all the religious rites while living in the Dera and was serving the Dera. It further finds mention in the aforesaid writing that after the death of Mahant Mansa Dass, Didar Puri would be the Mohatmim of the Dera. The writing (Exhibit P-1) also bears the signatures of the respectables of the village who had collected at the Dera at the time of its execution.

On the other hand, appellant-Dharam Dass was never adopted as Chela by Mahant Mansa Dass nor is there any evidence on record showing that any ceremony for

adopting him as Chela was ever performed. The appellant has placed on record Majornama, Exhibit DW5/1 showing that he was appointed as Mohatmim by several Saints and Mahants. The appellant has also referred to photographs Exhibit DW6/1 to DW6/14 to show that there was an assembly of Udasi Sadhus in village Harpalan. However, the Scribe of the Majornama has not been examined by the appellant. Gurbachan Singh, who appeared as DW5 deposed that Majornama was scribed by Lachhman Dass, Joint Secretary of Bhartia Udasin Mahasabha, Ambala. However, in the cross-examination he admitted that the Majornama was not scribed in his presence and that the Bahi from which the Majornama has been removed is lying blank. The said Bahi was given to him by Dharam Dass, appellant on 16.2.1987, the date on which his statement was recorded before the Court. The photographs as well as the Majornama were not placed on record along with the written statement nor had anything been mentioned in the written statement with regard to Majornama having been ever executed and the photographs pertaining to appointment of appellant as Mohatmim. It appears that these documents have been prepared later on, in order to create evidence in favour of the appellant. The argument advanced by learned counsel for the appellant that respondent-Didar Dass was expelled by Mahant Mansa Dass from the Dera, is not substantiated by any cogent evidence. It is true that Mahant Mansa Dass had filed a suit against Didar Puri in the Court at Rajpura. However, the compromise (Exhibit P-2) was effected between the two on 31.10.1970. The said compromise was

witnessed by several persons and statement of Mahant Mansa Dass was also recorded in the Court. PW5-Joginder Singh categorically stated that he had scribed the above compromise at the instance of Mahant Mansa Dass and Didar Dass and that the compromise was thumb-marked by Mahant Mansa Dass while the plaintiff Didar Dass had appended signatures on the same. There is no evidence that Didar Dass was not residing in the Dera after the said compromise.

Learned counsel for the respondent argued that appellant is a married man whereas, according to the custom, a Mohatmim of Udasi Dera has to observe celibacy and, therefore, he is not entitled to be appointed as Mahant of the Dera. Learned counsel further argued that appointment of a Mohatmim is based on general customary law and/or customs/usage of the particular Math or Dera. As per the custom prevalent in the Dera Khir Ka Khera only such persons, who observe celibacy, are appointed as Mohatmim of the Dera. Mahant Mansa Dass was also an unmarried person.

It is well known that every religious institution has its own usage with regard to succession to Mahantship or Mohatmimship. The installation ceremony is intended for giving publicity to the election/appointment of a candidate to the Gaddi as Mohatmim and succession to the office of Mahant has to be decided on the basis of custom applicable to each particular Math or the practice prevailing in a large

number of Maths or Deras. The custom that prevails in the Udasi Dera is that the Mahant appoints one of his Chelas as his nominee during his life time. When there is no such appointment made by the Mahant, then the successor is appointed by a system of election by the Bheikh. It is true that even after the appointment of Chela, it has to be endorsed by the Bheikh. In the present case, the plaintiff's appointment was made by writing dated 7.1.1954, Exhibit P-1 and he was appointed after performing the custom of 'Choti Katna' in the presence of respectables of the village and other Saints/Mahants.

It is proved from document Exhibit P-6 that on a previous occasion, Mahant Kishan Dass had scribed a writing on a plain paper during his life time appointing Mansa Ram as his Chela and had adorned him with Pagri and all the rights attached to the Dera. The said fact was verified by Lambardar and other respectables of the village. Puran Dass, Chela of Mahant Kishan Dass had challenged the appointment of Mansa Dass after the death of Mahant Kishan Dass. In those proceedings, the Nazam, District Patiala, vide order dated 31.1.2004-BK held that only a senior Chela is entitled to Mahantship. The Lambardar and respectables of the village had also admitted the entitlement of Mansa Ram for being appointed as Mahant and, therefore, the revenue officers had sanctioned the mutation in his favour. From the above mentioned documents, it is evident that the eldest Chela, who is appointed by the Mahant, succeeds him and such an appointment has to be endorsed by the Lambardar and

other respectables of the village. The document Exhibit P-6 clearly proves that for the appointment of Mohatmim of Udasi Shrine 'Dera Khir Ka Khera', a senior Chela appointed by the Mahant succeeds him and the said appointment has to be endorsed by the Lambardar and respectables of the village. On the contrary there is nothing on record to prove that appellant-Dharam Dass was ever appointed as Chela by Mahant Mansa Dass or any ceremony for appointing him as Chela was ever performed and endorsed by the Bheikh or respectables of the village. There is no evidence on record to prove as to under which circumstances or on which particular date plaintiff Didar Dass was removed or expelled by Mahant Mansa Dass from the Dera or he was renounced as Chela by Mahant Mansa Dass.

In view of the above discussion, I do not find any ground to interfere with the findings of both the Courts below and the appeal is dismissed.

20th September, 2006 **(NIRMAL YADAV)**
pc **JUDGE**

Note:- Whether to be referred to Reporters - YES/NO.